

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

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) MDL No. 1456
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) CIVIL ACTION: 01-CV-12257-PBS
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) THIS DOCUMENT RELATES TO ALL
) CLASS ACTIONS
)

) Judge Patti B. Saris
)

**PLAINTIFFS' MOTION FOR A STATUS CONFERENCE TO ADDRESS
ISSUES RELATING TO PENDING CLASS CERTIFICATION MOTION**

On July 28, 2005, the Court issued an Order indicating that the Court had met with Professor Berndt to clarify the contents of his report. The Court's conference with Professor Berndt gives rise to the following motion.

Plaintiffs seek a status conference to discuss certain issues that have profoundly impacted Professor Berndt's report.

On March 14, 2005, plaintiffs moved for sanctions against the defendants for submission of filings by defense expert Young, which filings plaintiffs contend were false and misleading. In the materials accompanying the motion for sanctions, plaintiffs document the falsity of the Young filings and how these filings have tainted Professor Berndt's report. The false assertions of fact found their way into the Berndt report and clearly influenced his thinking. There is thus a risk, that to the extent Berndt's report is a basis for the Court's decision, the taint may unjustly influence the outcome of the class certification motion.

Second, on July 21, 2005, plaintiffs filed a motion to supplement the record with new evidence relating to the class certification decision. Among this newly submitted evidence are documents indicating that defense tutorial expert Bell, while acting as a consultant for BMS, counseled BMS how to market the spread and to not create "any printed materials" in the process. Plaintiffs believe that to the extent Professor Berndt observed Mr. Bell, read his tutorial, and was influenced by Bell, the issue of how to deal with this obvious credibility issue needs to be addressed. And the new evidence plaintiffs seek to add to the record also provides additional refutation of Young's opinions that Professor Berndt was not made privy to previously.

Plaintiffs request a status conference to address these issues and how they might be dealt with in the class certification process.

DATED: July 29, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **PLAINTIFFS' MOTION FOR A STATUS CONFERENCE TO ADDRESS ISSUES RELATING TO PENDING CLASS CERTIFICATION MOTION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on July 29, 2005, a copy to Verilaw Technologies for Posting and notification to all parties

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